Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the	)	CC Docket No. 96-115
Telecommunications Act of 1996:	)	
	)	
Telecommunications Carriers' Use	)	
of Customer Proprietary Network	)	
Information and Other	)	
Customer Information	)	

GTE's COMMENTS

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SUMMARY

GTE urges the FCC to put aside various proposals that would increase the FCC's regulatory scope and depart from the manifest intent of Congress. The Commission should not alter the balances created by Congress in the Telecommunications act of 1996, and should not heed proposals that would impose obligations on carriers that go beyond a reasonable interpretation of 47 U.S.C. section 222. Specifically, the FCC should not grant customers the right to depart from the terms of section 222 and should not prevent carriers from exercising their own judgment with respect to storage and protection of data.

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GTE's COMMENTS

GTE Service Corporation and its affiliated telecommunications companies (collectively "GTE")[1] respectfully submit their Comments on the Further Notice of Proposed Rulemaking ("FNPRM") in the above-captioned proceeding.[2] In the FNPRM, the Commission seeks comment on carrier duties and obligations established under 47 U.S.C. section 222(a) and (b)[3] forming part of the Telecommunications Act of 1996 ("the 1996 Act"). Among other things, section 222 requires carriers to "protect the

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1 GTE Alaska, Incorporated, GTE Arkansas Incorporated, GTE California Incorporated, GTE Florida Incorporated, GTE Hawaiian Telephone Company Incorporated, The Micronesian Telecommunications Corporation, GTE Midwest Incorporated, GTE North Incorporated, GTE Northwest Incorporated, GTE South Incorporated, GTE Southwest Incorporated, Contel of Minnesota, Inc., Contel of the South, Inc., GTE Communications Corporation, and GTE Hawaiian Tel International Incorporated.

2 Second Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 96-115, FCC 98-27 (released February 26, 1998) ("FNPRM").

3 All statutory section references are to 47 U.S.C. unless otherwise specified.

confidentiality of proprietary information of, and relating to, other telecommunications carriers, equipment manufacturers, and customers, including telecommunications carriers reselling telecommunications services provided by a telecommunications carrier"[4] and "not use such information for its own marketing efforts."[5]

I. ESPECIALLY IN A COMPETITIVE MARKETPLACE, THERE IS STRONG MOTIVATION FOR CARRIERS TO RESPECT CUSTOMERS' WISHES WITH REGARD TO CPNI RESTRICTIONS.

The FNPRM seeks comment on whether there should be a recognized customer right to restrict marketing use of their CPNI even where under section 222 the carrier would be entitled to make use of their CPNI.

GTE has long recognized that retaining customer goodwill necessitates policies responsive to customers' wishes regarding their privacy and the use of their individual information[6]. At customer request, GTE places the customer on a "Do Not Solicit" list – which goes beyond restrictions on the use of CPNI for marketing purposes by actually

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[4] 47 U.S.C. § 222(a)

[5] 47 U.S.C. § 222(b)

[6] For example, GTE does not make customer lists available to outside parties for marketing purposes unless required to do so by law or regulation even when telecommunications carriers are not restricted from doing so and could otherwise profit by the sale of such information.

restricting GTE's marketing efforts.[7] In preventing any perceived violation of the customer's rights, the Do Not Solicit list is more effective than limitations involving CPNI, and in this area Congress has already spoken with regard to residential customers. *See* 47 U.S.C. section 227(c). Moreover, carriers that are insensitive to the expressed wishes of their customers will quickly find in a competitive marketplace that customers will not be bashful about expressing their displeasure by choosing another carrier more sensitive to their wishes. The FNPRM does not identify any general pattern of abuse in the industry – which testifies to the effectiveness of a combination of federal statute passed in 1992, market forces, and carriers' good business sense in reasonably protecting the consumer without the need for imposing on carriers new and costly regulatory burdens.

While GTE does not believe additional rules are needed, any rules adopted must respect: (1) the carrier's ownership interest in its own operating data; (2) the carrier's right to make use of individual CPNI for such purposes as billing, collecting, fraud prevention and the like under section 222(d); and (3) the carrier's right to employ non-CPNI information in support of its marketing efforts. These points must be clearly understood by customers, competitors and regulators. Without such an understanding,

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[7] 47 U.S.C. § 222(f)(1) makes it clear that CPNI is the customer information a carrier obtains "solely by virtue of the carrier-customer relationship; and ... information contained in the bills pertaining to telephone exchange services or telephone toll service ... [but] does not include subscriber list information." Thus, Customer specific marketing information that is purchased from outside sources by definition is not CPNI. And nothing in section 222 or the FCC's rules would prevent the carrier from making an otherwise lawful marketing contact based on customer information purchased from outside sources.

customers receiving perfectly proper solicitations may incorrectly assume that their CPNI was used against their expressed instructions – an assumption that could generate unnecessary confusion and complaint activity.

Given existing statutory protection and the carrier's interest in keeping the customer's business, there is no justification for new rules that would grant customers a right that goes beyond the terms of section 222 and upsets the careful balance built into that section of the statute. The carrier has certain rights under section 222(c) that must not be compromised by additional agency-created rules that will only confuse customers who are already fully capable of protecting themselves simply by placing their names on a Do Not Solicit list. A customer seeking to impose restrictions of the sort here proposed would not be exercising a section 222 right but a right created outside the statute itself. There is no requirement for such a legally questionable measure when the customer is already equipped to protect itself.

II. NO ADDITIONAL RULES ARE REQUIRED TO PROTECT CARRIER INFORMATION.

The FNPRM requests comment on whether additional regulations, safeguards and enforcement mechanisms are needed to protect carrier information that because of business relationships may be available to another carrier.

Subsection 222(b) sets out a clear obligation: "A telecommunications carrier that receives or obtains proprietary information from another carrier for purposes of providing any telecommunications service shall use such information only for such purpose, and shall not use such information for its own marketing efforts."

This clear provision speaks for itself. It is not a matter of protecting unsophisticated members of the public. The carriers who are the beneficiaries of this provision can be expected to be vigilant in protecting their rights through contract terms[8] or complaints or other legal measures.

As the industry develops, as the line between facilities-based carriers and resellers blurs, carriers will increasingly occupy both sides of this equation – as both obligors and beneficiaries of section 222(b). A situation of this sort – where there are matching concerns on all sides, here guided by the mandatory terms of a federal statute – has a strong tendency to lead to industry-wide cooperation.

With regard to the proposal to extend section 222(b) protection beyond *carriers* as defined by Congress to include Information Service Providers (ISPs), again this goes beyond the manifest intent of Congress. Congress was fully capable of adding ISPs to the beneficiary class under subsection 222(b) if that was its intent. Presumably the same parties now arguing for this inclusion made those same arguments to Congress in the course of its extended legislative review from 1994 to early 1996. Congress rejected this view and instead created a statutory provision built upon a certain balance that placed *carriers* as defined by the 1996 Act in the class of subsection 222(b) obligors and in the class of subsection 222(b) beneficiaries. While as a practical matter the subsection 222(b) burdens will fall heavier on some carriers than others, all carriers are subject to its obligations and all carriers are eligible to benefit from its provisions.

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[8] For example, billing and collection agreements commonly address a carrier's responsibility when having access to competitively sensitive information of another carrier.

To now sweep up ISPs into the beneficiary class -- while necessarily leaving them out of any subsection 222(b) obligations -- would upset the balancing determination of Congress and introduce an entirely new and most inappropriate departure from the clear intent of Congress. This would be tantamount to saying Congress intended not what it actually said but a more sweeping provision that draws the lines and places the balances in different places. Any such action by the Commission would invite reversal by a reviewing court.

Further, there is no reason for the FCC to contemplate such action. ISPs are important carrier customers. In a highly competitive environment, carriers seek to avoid offending important customers. As observed by the FNPRM (at paragraph 117), carriers do not "seek to jeopardize the good will of their customers"; and this applies even more emphatically with important customers such as ISPs. Then insofar as residential customers are concerned, their privacy is protected by subsection 227(c).

There is no need for the Commission to adopt rules when the statute itself is definitive. The Commission should allow the statute to operate as a self-enforcing act of Congress. Certainly, the FCC should not adopt rules until the FCC and the industry have gained some experience; and not unless that experience shows rules are required. The Commission should discover by experience whether anything is "broke" before creating rules to "fix it."

III. WITH ALL CARRIERS BEING RESPONSIBLE FOR COMPLYING WITH SECTION 222, THERE IS NO REQUIREMENT FOR PROHIBITING FOREIGN ACCESS TO, OR STORAGE OF, CPNI.

The FNPRM, responding to FBI concerns, asks whether the Commission should prohibit the foreign storage of CPNI, or foreign access to domestic CPNI, or require prior customer approval of storing CPNI "off shore."

As a preliminary point, the Internet demonstrates that today the storage location of data has little bearing on how and where it can be used. When servers in various locations of the world are linked, they can function as one system even though the physical piece parts are located in scattered locations separated by thousands of miles.

The location of data files abroad does not change any carrier's obligations under section 222. Section 222 imposes important obligations on all the carriers in the country, especially with regard to the protection of individual CPNI. As with the construction and maintenance of the traditional network, how a company carries out its responsibilities should simply rest with the carrier involved. No evidence has been presented that there is a need for the FCC to intervene in company decision-making when it comes to storage and protection of CPNI. The 1996 Act does not address this question, and it is a strange notion that a statute looking to deregulation should be read to expand the need for government regulation into entirely new areas. The FBI's

proposal for such an expansion would move regulation in precisely the opposite direction from the mandate of Congress as contained in the 1996 Act.[9]

No carrier can circumvent its obligations under section 222 by merely locating the files containing CPNI in a foreign country. Since carrier obligations under section 222 are not affected by where the carrier chooses to locate its data facilities, there is no justification for governmental intervention in a carrier's exercise of business judgment so long as the carrier continues to abide by statutory requirements and applicable FCC rules.[10]

The FNPRM also seeks comment on the FBI's proposal that carriers maintain copies of the CPNI of all U.S.-based customers because of the need for "prompt, secure, and confidential law enforcement public safety, or national security access to such information, pursuant to lawful authority."[11] Again, this represents a new concept of carrier obligation that is essentially unrelated to section 222. If the FBI wishes a new legal obligation imposed on carriers, this should be discussed with Congress. It should not be appended to a proceeding concerned with section 222, where it is essentially unrelated and irrelevant.

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[9] Section 222 did not establish new CPNI retention requirements for carriers based on the needs of law enforcement. While certain requirements were imposed on carriers by the Communications Assistance for Law Enforcement Act ("CALEA"), those requirements are outside of the scope of the instant proceeding.

[10] As recent events involving one of the Department of Defense computer systems has shown, physically locating sensitive data within this country is no guarantee that hackers will not be able to gain illegal access to the data. Http://www.af.Mil/news/dec1996/n19961231_961333.html.

[11] FNPRM at 210.

Respectfully submitted,

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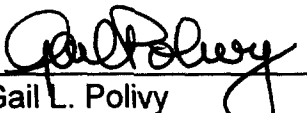
By 

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Certificate of Service

I, Judy R. Quinlan, hereby certify that copies of the foregoing "GTE's Comments" have been mailed by first class United States mail, postage prepaid, on March 30, 1998 to all parties of record.

Judy R. Quinlan